- According to the BOMA *Critical Connections* survey, the average number of tenants in office buildings is 22. We have used 20 to simplify the arithmetic and provide a slightly more conservative figure. The median number of tenants in the buildings covered by the BOMA survey was between 20 and 40, so we have assumed that the median number of tenants in a building is 30.
- The number of units in apartment buildings varies greatly, but according to Census Bureau data available on the National Multi Housing Council's Web site, there are about 15,029,100 apartment units in 518,820 apartment buildings with five or more rental units. This is an average of 29 units per building. In the first example, we have rounded to 30 units both to simplify the arithmetic and to provide a slightly more conservative figure. The second example, using 150 units, represents the roughly 46% of apartment buildings that have between 50 and 300 units. On that basis, we have assumed that the median number of units in an apartment building is 150.
- According to the FCC's 1999 Annual Cable Television Competition Report, average cable revenue per subscriber is $44. We have rounded this figure to $50 for the same reasons as above.
- We do not have an accurate figure for the average amount paid by office building tenants for telecommunications services. For purposes of this comparison, we have used $1000 per month, which we believe is a conservative estimate. The estimate was calculated by dividing an estimate of total revenues received by telecommunications providers from business subscribers by an estimate of the number of office tenants in the country. The $1000 figure is only an approximation, but we think it provides a rough basis for comparison. We presume that the Commission could obtain such infotmation from carriers.

  According to the Census Bureau's 1992 Economic Census, there are 5,829,983 business establishments in the country. Note that this figure is likely to be considerably higher than the number of office tenants because many businesses, especially smaller ones, will not rent space in office buildings. Therefore, to estimate the number of actual office tenants, we subtracted the number of business establishments that had no employees (411,549) or only 1 to 4 employees (2,330,762), which resulted in 3,087,671. We rounded that number to 3.1 million.

  To determine total telecommunications revenues received from office tenants, we started with the Census Bureau's estimate of local, long distance and network access revenue for 1998. The Census Bureau reports $30.3 billion in nonresidential local service revenues, $60.0 billion in long-distance revenues, and $31.7 billion in network access revenues, for a total of $122 billion. We ignored long distance revenues, and assumed that all network access revenues were ultimately paid by telephone subscribers and received by local exchange carriers, so that nonresidential subscribers paid LECs approximately $62 billion for telecommunications services in 1998. We then reduced that figure by 30% to account for revenue from owner-

FNPRM notes that we applied the same reasoning to telecommunications without providing additional data. While this is correct, the initial analysis still proves the point with respect to telecommunications competition, because the numbers do not change much. The fact is that the average residential telephone subscriber does not pay much more per month for local telephone service than he does for cable television. Even if one doubles the $50 per month figure used above, the revenue in an average-sized building is only $36,000 per year, and the revenue for a median-sized building is $180,000. This narrows the gap somewhat, but it is still substantial. Furthermore, we believe our assumptions regarding business revenues were quite conservative, so the gap is very likely wider than in our example. It should be relatively simple for the Commission to obtain the necessary figures from carriers.[104]

Accordingly, we think it is fairly simple to establish that the market for residential telecommunications services, even in MDUs, is substantially different than that for business services. The Commission should not regulate exclusive contracts for telecommunications service in residential buildings for the same reasons it has not regulated exclusive contracts for cable service: the only way to encourage competition in the residential market is by allowing small providers to develop a toehold.[105] If they are permitted to serve MDUs on an exclusive

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occupants and other subscribers who do not rent space in office buildings. The resulting figure of $43 billion was then divided by 3.1 million office tenants for an average of $13,870 per year or $1156 per month, which we rounded down to $1000 to provide a conservative figure. If long distance revenues are included, using the same method yields an average of $2400 per month.

- Note that we have assumed 100% penetration rates for both types of service, which exaggerates total cable service revenues by about one-third, based on historical experience.

[104] The CLEC Report states that businesses spend about $1,500 per month on broadband services, while residences spend $50. CLEC Report ch. 3 at 19. This supports our analysis.

[105] *See also* Lansdale Declaration at ¶ 13; Ansel Declaration at ¶¶ 5, 6.

basis, they can be assured of sufficient cash flow to justify an initial investment. Over time, they may be able to expand outside the MDU market. Banning exclusive contracts, however, will expose small competitors to the certain threat of intrusions and anti-competitive actions by the incumbents.[106]

Finally, as discussed above, we do not believe that the Commission has the power to regulate agreements for building access because they are not agreements for the provision of telecommunications service. The Alliance supported and continues to support the Commission's ban on exclusive contracts in commercial buildings because such contracts do not serve the needs of commercial tenants and are rare. Nevertheless, the Commission's authority to adopt the ban is by no means clear. For this reason alone, the Commission should refuse to extend the ban to residential buildings.

VI. THE FCC SHOULD NOT INTERFERE WITH EXISTING EXCLUSIVE CONTRACTS IN COMMERCIAL BUILDINGS.

Once again, the Commission's authority to ban prospective exclusive contracts is questionable. It therefore follows that the Commission's authority to abrogate existing contracts is at least as questionable. Furthermore, there is no evidence that exclusive contracts present a significant barrier to competition in commercial buildings. The FNPRM cites no statistics or other quantitative evidence regarding the number or prevalence of exclusive contracts in

[106] Of course, incumbents can negotiate exclusive contracts as well. As far as we are aware, however, it is relatively rare for an ILEC to enter into any kind of agreement with an MDU owner, much less an exclusive one. Furthermore, a new entrant is unlikely to choose to enter a building that is already served by an incumbent, except in unusual circumstances, so the option is of much more benefit to the competitor than it is to the incumbent. The challenge for residential CLECs will be to show that they offer better service, lower prices, or additional features that differentiate them from the incumbent, and a sheltered environment is the best place for them to start.

commercial buildings. Indeed, the FNPRM does not even refer to any anecdotes referring to such contracts. We believe that the record in this stage of the proceeding will be equally thin.

In addition, as existing contracts expire, they will necessarily be replaced by nonexclusive contracts under the Commission's ban. We believe that there are few long-term exclusive contracts in force. Consequently, the Commission has no reasonable basis for abrogating existing contracts.

VII. THE COMMISSION CANNOT AND SHOULD NOT REGULATE PREFERENTIAL MARKETING AGREEMENTS AND SIMILAR ARRANGEMENTS.

Marketing agreements are exactly what they are called: Agreements under which building owners provide telecommunications carriers with marketing services. The Commission's authority to regulate such arrangements is as tenuous as its authority over exclusive contracts.

In any case, the Commission's goals are actually better advanced by not regulating such arrangements.

In a typical marketing agreement, a building owner agrees to provide one or more special services to the provider. These may range from merely handing new tenants applications for service or advertising fliers, to actively soliciting tenants, demonstrating the capabilities of a provider's service, distributing literature throughout the property, providing advertising space in a building newsletter, holding events in the building lobby, and many other activities that serve to enhance the reputation and market share of the provider.[107] The benefit to the provider, particularly the unknown competitor, is obvious: the building staff essentially serves as an

[107] Bitz Declaration at ¶ 13. Ansel Declaration at ¶ 7-8; Lansdale Declaration at ¶ 15.

extension of the provider's marketing staff. One benefit to the building owner is a marketing fee, which may be rolled into the fee for building access. Another benefit is a closer relationship with the provider, in case there are service problems. But there is risk for the owner as well: the more aggressively the owner markets the provider's service, the more closely the provider and the owner will be linked. If the provider proves unreliable, this will immediately harm the owner's relations with its tenants. The owner will be expected to correct the problem, and will face the consequences of tenant dissatisfaction if it does not.[108]

Such agreements also benefit tenants. Because the owner has a greater stake in the provider's reputation, the owner is more likely to consider the provider's reliability and service quality before entering into the agreement, and more likely to monitor the provider's performance.

VIII. THE FCC SHOULD WELCOME BLECs AS ANOTHER MECHANISM FOR DELIVERING SERVICES AND PROMOTING COMPETITION.

The FNPRM asks for comment on several issues related to "building LECs" or "BLECs." Although some prominent real estate firms have invested in such companies, the Alliance was formed to preserve the ability of building owners to control access to their property. In addition, we believe that the BLEC industry is in a better position to answer the Commission's questions regarding the types of services they provide and the nature of their relationships with building owners.

Having said that, however, we also believe that the Commission should welcome the participation of the BLECs in the telecommunications marketplace. Property owners invested in BLECs in the first place because they had concluded that the more traditional CLECs were not

[108] Ansel Declaration at ¶ 10.

responsive enough to the needs of building owners and their tenants. Rather than emphasizing the construction of facilities in the public rights-of-way, BLECs concentrate on installing networks within buildings, and providing a range of advanced services, including non-telecommunications services, to tenants.[109] This represents a very different business model from that of the CLEC industry. Given recently expressed concerns over the financial health of the CLEC industry,[110] the BLEC approach may well prove to complement the CLEC strategy in ways that advance the Commission's overall policy goals even more than the traditional CLECs. We also note that only a handful of property owners have invested in BLECs, and that BLECs have agreements to serve only a relatively small number of buildings. Accordingly, we urge the Commission to refrain from imposing special regulations on the BLECs.

That is not to say, however, that the BLEC's should not be subject to all the regulations applicable to them by virtue of their status as carriers. Unlike property owners, BLECs themselves would appear to be subject to the Commission's jurisdiction, at least with respect to their provision of telecommunications services. Consequently, we presume that the BLECs have the benefit and burden of all Commission regulations that apply to other CLECs.

[109] New Paradigm Resources Group, The BLEC Report (1st ed. 2001) at 1-2, 1-3.

[110] *See, e.g., Telecommunications Reports* at 9, 23 (Dec. 18, 2000).

CONCLUSION

We respect the Commission's continuing commitment to promoting local competition in every sector of the market. We hope that the Commission will respect the real estate industry's commitment to serving its customers. Allowing the Alliance's guidelines and model documents the opportunity to set a standard and permitting the free market to continue to work will achieve far more than regulation could. Although we maintain as strongly as ever that the Commission has no power to interfere in relations between building owners and telecommunications providers, the Alliance will continue to work with the Commission and the telecommunications industry to develop mutually agreeable approaches to the issues that concern the Commission. The Commission, however, must respect the limits of its jurisdiction and the Constitution.

Respectfully submitted,

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List of Exhibits

Exhibit A

Members of the Real Access Alliance

EXHIBIT A
Members of the Real Access Alliance

<u>Building Owners and Managers Association International</u>

Founded in 1907, the Building Owners and Managers Association (BOMA) International is a dynamic international federation of 101 local associations. The 17,000 members of BOMA International own or manage more than 8.5 billion square feet of downtown and suburban commercial properties and facilities in North America and abroad. The mission of BOMA International is to advance the performance of commercial real estate through advocacy, professional competency, standards and research.

<u>Institute of Real Estate Management</u>

The Institute of Real Estate Management (IREM)educates real estate managers, certifies the competence and professionalism of individuals and organizations engaged in real estate management, serves as an advocate on issues affecting the industry, and enhances and supports its members' professional competence so they can better identify and meet the needs of those who use their services. IREM was established in 1933 and has 10,000 members across the country.

<u>International Council of Shopping Centers</u>

Founded in 1957, the International Council of Shopping Centers (ICSC) is the trade association of the shopping center industry. Its 38,000 members in the United States, Canada, and more than 70 other countries represent owners, developers, retailers, lenders, and all others having a professional interest in the shopping center industry. Its 34,000 United States members represent almost all of the 43,661 shopping centers in the United States. In 1998, these centers accounted for $1,082.5 billion in retail sales, which is 53 percent of total retail sales, excluding sales by automotive dealers, and generated more than $44 billion in state sales tax revenue. In addition, shopping centers employ over 10 million people, about one in every 10 non-agricultural jobs in the United States. In a typical month, 188 million adults shop at shopping centers - 94 % of the population over 18 years of age.

<u>Manufactured Housing Institute</u>

The Manufactured Housing Institute (MHI) is the leading national trade association for manufactured housing across the nation. It represents all segments of the industry, including manufacturers, component suppliers, retailers, community owners and operators, state associations, and those financial institutions involved in the lending and insuring of manufactured homes.

National Apartment Association

The National Apartment Association (NAA) has been serving the apartment industry for 60 years. It is the largest industry-wide, nonprofit trade association devoted solely to the needs of the apartment industry. NAA represents approximately 26,000 rental housing professionals holding responsibility for more than 3.6 million apartment households nationwide.

National Association of Home Builders

The National Association or Home builders is a trade association representing the nation's housing industry. NAHB is a federation of more than 800 state and local home builder associations nationwide working to enhance the political climate for housing and for the building industry, and promoting policies that keep housing a national priority. NAHB's members are engaged in all aspects of real estate development, ownership, and management, and include owners and managers of apartment buildings, condominiums, cooperatives, and community associations. NAHB is comprised of over 197,000 members, who collectively employ over eight million Americans.

National Association of Industrial and Office Properties

The National Association of Industrial and Office Properties (NAIOP) is the trade association for developers, owners, and investors in industrial, office, and related commercial real estate. NAIOP is comprised of over 7,000 members in 47 North American chapters and offers its members business and networking opportunities, education programs, research on trends and innovations, and strong legislative representation.

National Association of Real Estate Investment Trusts

The National Association of Real Estate Investment Trusts (NAREIT) is the national trade association for real estate investment trusts (REITs) and publicly traded real estate companies. Members are REITs and other businesses that own, operate, and finance income-producing real estate, as well as those firms and individuals who advise, study and service those businesses.

National Association of Realtors

The National Association of Realtors (NAR) is the nation's largest professional association, representing more than 720,000 members. Founded in 1908, the NAR is composed of residential and commercial REALTORS ® who are brokers, salespeople, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. The association works to preserve the free enterprise system and the right to own, buy, and sell real property.

National Multi-Housing Council

The National Multi-Housing Council (NMHC) represents the interests of the larger and most prominent firms in the multi-family rental housing industry. NMHC's member are engaged in all aspects of the development and operation of rental housing, including the ownership, construction, finance, and management of such properties.

Real Estate Roundtable

The Real Estate Roundtable (RER) provides Washington representation on national policy issues vital to commercial and income-producing real estate. A leading public policy advocate, RER addresses capital and credit, tax, environmental, technology and other investment-related issues. RER members are senior executives from more than 200 U.S. public and privately owned companies across all segments of the commercial real estate industry.

Exhibit B

Declaration of Brent W. Bitz

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Promotion of Competitive Networks in Local Telecommunications	)	WT Docket No. 99-217
	)	
Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services	)	
	)	
Cellular Telecommunications Industry Association Petition for Rulemaking and Amendment of the Commission's Rules To Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes And Assessments	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Review of Section 68.104 and 68.213 of The Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network	)	CC Docket No. 88-57

DECLARATION OF BRENT W. BITZ
IN SUPPORT OF FURTHER COMMENTS OF
THE REAL ACCESS ALLIANCE

I, Brent W. Bitz declare as follows:

1. I submit this Declaration in support of the Further Comments of the Real Access Alliance. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.
2. I am an Executive Vice President at Charles E. Smith Commercial Realty LP. I have been in the Commercial Real Estate business for twenty-five years, and have been involved in office

and retail properties throughout the United States and Canada. My education includes a Masters of Business Administration and the designation of Real Property Administrator from BOMI. My duties at Charles E. Smith Commercial Realty include oversight for our company's nineteen million square foot portfolio of commercial properties. This portfolio consists of both owned and fee managed properties and is located in the Washington metropolitan area. In this context, I am responsible for all matters pertaining to the occupancy needs and services of our tenants. In addition to the above, I currently serve as a member of the Building Owners and Managers Association National Advisory Council.

3. Charles E. Smith Commercial Realty, LP, is a private master limited partnership that owns and manages a portfolio of commercial properties located in the metropolitan Washington area. Our company also provides management, leasing and financial advisory services to third-party owners. We have a portfolio of eighty-one buildings, seventy-five which are 100,000 square feet are larger. Eleven of our buildings are fully occupied by the federal government. In addition, we have high profile professional legal and accounting firms and high technology companies, as well as a wide range of general business activities. At least some of these buildings include retail tenancies. The size of our tenants range from 1.8 million square feet for one large government tenant, to tenants of approximately one thousand square feet. Part of our business responsibility is to ensure that the telecommunication needs of our tenants, as they relate to their occupancy in our building, are well taken care of. To that end, we have regular interaction with our tenants to ensure that our building operating staff properly supports their needs.

4. A competitive telecommunications marketplace is important to our tenants and is, therefore, vital to building owners and managers, like Charles E. Smith. For an office building to remain competitive in today's marketplace, it must offer tenants not only a wide array of telecommunications services, but also an array of choices in telecommunications service providers. In fact, building owners and managers aggressively market the characteristics of their properties, including telecommunications services. The industry is evolving so rapidly in this direction that it is my opinion that a competitive array of telecommunications services will shortly be a standard and expected building service just like air conditioning or cleaning. Because tenants absolutely need a full selection of telecommunications services and providers, if we don't provide them, then they will leave our buildings, *i.e.*, vacate.

5. Vacancy is a building owner's greatest fear. If our portfolio vacancy rises by 1% because we can't provide competitive telecommunications services to our tenants, my company will lose approx. $6,500,000/year and I will lose my job. Our motivation is clear. By way of example if a typical 15,000 square foot floor is vacant for one month we lose $37,500.
6. Telecommunications access agreements are a very small portion the revenue generated from our buildings. When one compares the modest income that we make from telecommunications providers to the great income that comes from rent payments of our tenants, it becomes clear that our interest in providing our tenants with the services they need and want far outweighs our interest in generating revenue from telecommunications providers using our buildings. For example, tenants in our buildings pay rents ranging from $25-$40 per square foot, however of revenue generated by our portfolio, only 25 cents per square foot comes from all the telecommunications providers combined.
7. It is our feeling that tenants are best served by having a range of companies in on a mutually competitive basis. In keeping with this policy, which is the one of the primary drivers behind our business strategy, we do not do exclusive access or marketing deals. In fact, we do not enter into preferred arrangements of any kind. We have 12 telecom service providers providing a variety of services to our portfolio of 70 non-federally occupied buildings. These companies include Verizon, Winstar, Teligent, Nextlink, Intermedia, Cypress, eziaz, elink, Everest, Allied Riser, Broadband Office, and Metro Media Fiber. Eight of the providers each serve virtually the entire portfolio and the other four serve substantial portions of the portfolio. This means that virtually every one of our 2,000 tenants in 70 buildings has access to anywhere from eight to twelve competitors for their business.
8. Our policy at Charles E. Smith Commercial Realty, LP, is to accommodate tenant requests for telecommunications services and I am completely satisfied that the existing telecommunications service environment adequately meets my tenants' needs. In every case, if we were not able to meet a tenant's requirements through existing telecommunications service arrangements, they were able to deal with a competitive service provider on a direct basis. At no time would we ever interfere with a tenant's desire to obtain improved service in this vital business area. For example, at 1666 K Street, Washington, DC, a law firm (O'Connor and Hannan), requested the services of Starpower, and we subsequently entered into a license agreement that was mutually satisfactory to all concerned. Starpower was not

in our list of pre-selected telecommunications services providers ("TSPs") and we did a deal with them even though we received no compensation. This was strictly for tenant accommodation. In addition to the above, we regularly work with major Federal Government agencies and the private contracting firms that work with them, to ensure that their specialized telecommunication needs are met. Many of these agencies have security concerns that require us to deal with specialized local exchange carrier services.

9. In fact, we have gone to great lengths to get a competitor to accommodate a particular tenant request even though the tenant has a long-term lease. For example, in 1998, a major law firm (Dickstein, Shapiro and Moran) at 2101 L Street, Washington, DC, requested the services of Teleport Communications. Although the firm's lease extended through 2006 and we were under no obligation to agree, we satisfied their request and entered into a license agreement with Teleport Communications even though we received no compensation.

10. Most of our business deals with TSPs are made for our entire portfolio, except for buildings occupied by the federal government. In our experience, most TSP's want to serve only a smaller and select portion of the portfolio. When we realized this business fact -- that as a result of our earliest deals our smaller buildings were getting left out --- we insisted in our later deals that they serve virtually every building. In my experience, the CLECs' current approach has been to cherry pick the best business opportunities, and leave some of our tenants without alternatives beyond the primary local carrier, Verizon. For example, we have found that CLECs want at least 10 tenants in a building. Of course, there is a general relationship between building size and the number of tenants and our CLECs tried to use a cut off of either 10 tenants per building or a size greater than 150,000 square feet. This is clearly seen in the issuance of warrants to us (warrants were given to our industry by such companies as Allied Riser, Broadband Office, Everest, Cypress and not by Winstar, Teligent, Nextlink). Even if we got them to take our entire portfolio, they reduced the amount of warrants to 10-30% of the amount given for a building over 150,000 square feet for these less desirable properties as compared to the larger and more tenanted buildings.

11. Our typical business deal with a TSP is generally for a term of 5 years with a 5-year renewal option at market. It would provide for rental of a percentage of gross revenues (generally 5-8%). In some cases there may be a modest annual fixed rent as well ($1,000-2,000). In some cases the TSPs gave us stock warrants or other rights in return for the deal. TSPs that entered

the business early on offered only modest fixed rents and no revenue percentage. Finally, we retain approval rights over all installation designs.

12. We provide marketing support to those providers that are on our list of pre-selected providers. When determining selected which providers to include on our list of pre-selected providers we consider three things: (1) the financial strength of the applicant *i.e.,* whether the provider appears financially capable of building out the entire system as planned and of providing the promised service; (2) the technology, strategy and range of services the provider intends to provide; and (3) whatever their business terms competitive in the market place.
13. Our standard marketing support is to advise the tenants of the TSP's service in our building and allow the TSP to conduct normal marketing programs (lobby reception, flyers, etc). While we do not permit door-to-door solicitation or peddlers, we will provide brochures to tenants for telecommunications providers who are serving the building. In addition, at the request of a telecommunications provider we will arrange a meeting in which the telecommunications provider can meet our tenants. Also, upon request of a telecommunications provider, we will provide a list of our tenants in order that they may market their service to them.
14. It takes about 4-5 months to finalize a portfolio-wide deal. This is really not any longer that it takes us to do a lease deal with a tenant from start to finish. Both sides are generally responsible for this time duration, in large part because both parties have to have lawyers involved in the negotiation of the legal as opposed to business terms. Perhaps the new "standard form agreement" will cut some of this time.
15. Finally, a building has only a finite amount of space and limited riser and telecom service areas and some buildings will reach a point where they can are no longer be able to accommodate more providers. If, as the telecommunications industry wishes, TSPs are given the unfettered right to access all of our properties who is to decide which TSP's have access to such a building? Will the FCC set up a bureau to sort out competing claims from the TSP's and on what basis?

16. Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on 1/18/01, in Arlington, Virginia.

Brent W. Bitz

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Exhibit C

Declaration of Robert E. Burke

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Promotion of Competitive Networks in Local Telecommunications Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services Cellular Telecommunications Industry Association Petition for Rulemaking and Amendment of the Commission's Rules To Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes And Assessments	)	WT Docket No. 99-217
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Review of Section 68.104 and 68.213 of The Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network	)	CC Docket No. 88-57

DECLARATION OF ROBERT E. BURKE
IN SUPPORT OF FURTHER COMMENTS OF
THE REAL ACCESS ALLIANCE

I, Robert Burke declare as follows:

1. I submit this Declaration in support of the Further Comments of the Real Access Alliance. I am fully competent to testify to the facts set forth herein, and if called as witness, would testify to them.

2. I am the Executive Vice President for Operations of Boston Properties, Inc. ("Boston Properties") with responsibility for administrative policy and day-to-day control of company operations on a national basis, and have been with Boston Properties since 1979. I have a Bachelor of Science degree from Bates College and a Bachelor of Civil Engineering degree from Rensselaer Polytechnic Institute.

3. Boston Properties is a fully-integrated, self-administered and self-managed real estate investment trust (REIT) that develops, redevelops, acquires, manages, operates and owns a diverse portfolio of Class A office, industrial and hotel properties. Boston Properties is one of the largest owners and developers of Class A office properties in the U.S., concentrated in four core markets – Boston, Washington, D.C., midtown Manhattan and San Francisco. Although our primary focus is office space, our property portfolio also includes hotels and industrial buildings. As of October 2000, Boston Properties' portfolio consisted of 144 premier properties totaling approximately 37.1 million square feet, including eighteen properties under development totaling approximately 4.6 million square feet. Of these 144 properties, 101 are office buildings and 32 are buildings supporting both office and technical uses. The office, research and development, and industrial properties have an occupancy rate of approximately 98%.

4. Boston Properties currently has in place approximately 600 individual telecommunications access agreements with more than two dozen companies, including portfolio-wide arrangements with six different carriers that comprise nearly two-thirds of the total number of these access agreements, as well as a number of existing agreements with long distance and RBOC carriers serving our buildings. The average number of competitors with access rights to our larger multi-tenant office buildings is between five and eight.

5. Despite the fact that multiple carriers have access rights to our properties pursuant to agreements that have been in place for a year or more on average, the majority of these access rights have yet to be exercised by the carriers. For example, of the portfolio-wide

access agreements to provide telecommunications services that have been signed and in existence for at least one year, less than 20% of the agreements have resulted in completed installations providing services to customers. It has been Boston Properties' experience that the initial urgency to negotiate and execute access agreements has generally been followed by extremely slow installation and marketing efforts on the part of the service providers.

6. Verification

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and that this declaration was executed on January 17, 2001, in Boston, Massachusetts.

Robert E. Burke

Robert E. Burke

Exhibit D

Declaration of Scott Skokan